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Supreme Court, U.S.
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In the

SUPREME COURT OF THE UNITED STATES

Lindsey K. Springer

Petitioner,

v.

Internal Revenue Service, ex rel. United States of America

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

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WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Public Protection Provision, 44 U.S.C. § 3512, along with 28 U.S.C. §§ 1331, 2201 and 5 U.S.C. § 702 provide Petitioner with the right to bring an action to prohibit the United States Department of Justice and Internal Revenue Service from subjecting Petitioner to any more penalty based upon the Internal Revenue Service's failure to bring its 1040 request into compliance with the Paperwork Reduction Act of both 1980 and 1995?

2. Does the questions regarding income tax information by the IRS on its Form 1040 derive from regulations or has Congress specifically requested the answer to the questions on Form 1040 specifically within some Act properly enacted?

3 Is the protection provided by 44 U.S.C. § 3512(1995) only authorized to be "raised" as a defense after a person has been subject to penalties or does the phrase "bar, or otherwise, at any time" authorize the protection to be raised in a private right of action, taken with 28 U.S.C. § 1331?

4. If a person can raise the protection provided by 44 U.S.C. § 3512 within a Tax Court Petition, as the

Tenth Circuit in *Pond v. CIR*, T.C. Memo 2005-255, WL 18928 10911-02 (10th.1-4-07) clearly said, even though the Tax Court disagrees with this, doesn't the fact Pond is the Petitioner support Petitioner's position with respect to when the protection can be levied against Agency Administrative Actions?

5. Which Appellate Court position is correct with regard to the meaning of 44 U.S.C. § 3512, the Panel in Springer III or the D.C. Circuit in *Saco River Cellular v. FCC*, 133 F. 3d 25,31 (D.C. Cir. 1998?

6. Does 44 U.S.C. § 3512(1995) deserve "*ejusdem generis*" in order to understand the protections reach?

7. Even if the Panel's statutory cannon is correct in that the protection provided by 44 U.S.C. § 3512 can only be raised as a defense, can't Plaintiffs raise defenses in the United States district courts?

8. Did the Panel abuse its power in imposing sanctions in the amount of $ 4,000.00 in Springer III and violate 28 U.S.C. § 46 by imposing filing restrictions against Petitioner, for appealing the Internal Revenue's abuse in refusing to comply with 44 U.S.C. §§§ 3506(c)(1)(B), 3507 and 3512?

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PETITION FOR WRIT OF CERTIORARI

Lindsey K. Springer respectfully requests that a Writ of Certiorari be issued as to each Question raised by Petitioner from the judgment and order of the United States Court of Appeals for the Tenth Circuit in Springer III and which should be to reverse the decision by the United States District Courts for the Northern Districts of Oklahoma finding it has subject matter jurisdiction.

OPINIONS BELOW

The decision by the United States District Court for the Northern District of Oklahoma ("Springer III") was entered on June 22, 2006. The Panel decision was entered May 1, 2007. The Panel decision imposing filing restrictions was entered May 23, 2007. The Order denying rehearing was issued July 3, 2007.

The Order denying rehearing was issued July 3, 2007.

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Tenth Circuit was final July 3, 2007.

Jurisdiction of this Court is invoked pursuant to

28 U.S.C. § 1254(1).

CONSTITUTION AND STATUTES

At issue is the First Amendment right to redress grievances against the administrative process of the Internal Revenue Service, as a government Agency, that Agency's failure to bring its requests for income information into compliance with the Paperwork Reduction Act of both 1980 and 1995 under 44 U.S.C. §§§ 3506, 3507 and 3512 and Petitioner's right to action under 28 U.S.C. § 1331 along with section 3512. Finally, whether the penalties/sanctions and filing restrictions are abusive and whether the restrictions are contrary to 28 U.S.C. § 46.

STATEMENT OF THE CASE

Between March, 2004 and September, 2005, Petitioner commenced two actions in the United States District Court for the Western District of Oklahoma, seeking intervention by the District Court regarding IRS Agency action involving their subjecting Petitioner to penalties and other abuses which clearly violated the law. See Springer I and II filed simultaneously with this Petition.

On January 3, 2006, request Form 1040 for 2005

was released to the public by the IRS. This request contained the same OMB # 1545-0074 as each previous request had displayed despite the 3 year limitation under 44 U.S.C. § 3507. At this same time, IRS made request through several other Forms, like Form 2555, W-2, 1040 NR, and over 20 others illegally displayed the request Form 1040 OMB # 1545-0074.

On February 17, 2006, because the IRS was using OMB # 1545-0074 like a drunken sailor, and because they were attempting to subject Petitioner to penalties, both civil and criminal, Petitioner filed Springer III in the Northern District of Oklahoma, seeking preliminary and permanent injunctive relief against the IRS regarding the subjecting of Petitioner to any civil or criminal penalties for any alleged failure to provide answers to any questions to the IRS on its bootleg and outlaw request Form 1040 because said request did not comply with either the 1980 or 95 PRA.

On June 22, 2006, Chief United States District Court Judge Claire V. Eagan dismissed Springer III on the Government's motion to dismiss citing that the mandating statute theory precluded the Paperwork Reduction Act from protecting Petitioner being

subject to "penalty" for the purported willful failure to provide answers to the IRS requests for information on request Form 1040. App.7

The District Court also stated that the Anti Injunction Act barred Petitioner's Complaint in Springer III as well as the protection under 44 U.S.C. § 3512 could only be raised as a defense and gave Petitioner no private right of action. App. 8 Petitioner timely appealed this decision to the United States Court of Appeals for the Tenth Circuit.

On May 1, 2007, the Tenth Circuit affirmed the district court decision on one of the three grounds cited by the district court. App. 23-25 The Panel affirmed Springer III on the grounds Petitioner had no right to sue for violation of the Paperwork Reduction Act by the IRS. The Panel imposed $ 4,000 penalty against Petitioner and directed filing restrictions on Petitioner in Springer III..

Petitioner filed objections to the filing restrictions part of the order as directed by the Panel and on May 23, 2007, the Panel upheld its restrictions suggested in its May 1, 2007 Order. Petitioner filed Petition for Rehearing to the entire panel decision and

Rehearing En Banc and on July 3, 2007, the Panel elected not to rehear nor vote for rehearing en banc. This Petition is timely.

ARGUMENT SUPPORTING GRANTING OF WRIT

1. **The Panel in Springer III conflicts with the Supreme Court in *Califano v. Sanders*, 430 U.S. 99, 105 (1977) which provided jurisdiction under section 1331 to the District Court to review IRS agency actions**

The Public Protection Provision, 44 U.S.C. § 3512, along with 28 U.S.C. §§ 1331, 2201 and 5 U.S.C. § 702 provide Petitioner with the right to bring an action to prohibit the United States Department of Justice and Internal Revenue Service from subjecting Petitioner to any more penalty based upon the Internal Revenue Service's failure to bring its 1040 request into compliance with the Paperwork Reduction Act of both 1980 and 1995.

Springer III is a simple action seeking to prohibit the IRS from subjecting Petitioner to any more penalties because the IRS request at issue, Form 1040, is out of compliance with the 1995 PRA.

There simply can be no doubt the IRS is an Agency and they are making information requests of

the public in a almost perpetual manner. It is equally well settled that the IRS is an Agency subject to the 1980 PRA then and 1995 PRA now. There can be and is no doubt that request Form 1040 has not displayed compliance with the PRA since its inception. See 3506(c)(1)(b), 3507 and 3512.

The 1995 PRA simply demonstrates how contemptuous the IRS requests have become. Take for instance Revenue Ruling 2006-21, dated April 10, 2006, in which Chief Counsel announces to the world that the 1980 PRA does not protect the public for failure to provide information on request Form 1040. Besides that being wholly false, the 1980 PRA had been proceeded by the 1995 Act for almost 11 years. App. 45

The Panel decision chose to avoid the reason the District Court dismissed Petitioner's Petition to which the District Court spent 5 pages on and chose to affirm on the basis of a single sentence at the end of the District Court order that said:

> "Further, plaintiff lacks authority to enforce the PRA. The PRA does not create a private right of action but, rather, serves as a defense. 44 U.S.C. §

3512(b); see *Fostvedt v. U.S.*, 978 F.2d 1201,1202 (10th Cir. 1992)." App. 8

The Panel seems to have rejected everything the district court reported except the above theory and even in that theory, the Panel did not agree with the case cited by the District Court in Springer III. Yet, it concluded Petitioner should be sanctioned and restricted as acting Frivolous.[1]

The Panel turned to *Sutton v. Providence St. Joseph Med.Ctr.*, 192 F.3d 826, 844(9th Cir. 1999) to conclude that pursuant to *ejusdem generis*, the public protection provision did not provide for a private right of action. App. 25 However, when explaining this theory, the Panel decided that the phrase "complete defense, bar or otherwise" was limited only to "defenses." App.25-26

Besides the obvious that this construction renders the phrase "no person shall be subject to any penalty" in 3512(a)(1995) meaningless, it also is an

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[1]This suggests the Panel is saying if you wish the PRA to protect you then your not protected and your right to access to this Court is a privilege which we will further penalize.

attempt to evade the more serious problem with the District Court's decision.

The district court held that "it is settled law that "the requirement to file a tax return is mandated by statute, not by regulation" and "such explicit statutory requirements are not subject to the PRA." *United States v. Dawes*, 951 F.2d 1189, 1191-92 (10th 1991)

There is no question the Tenth Circuit did not say this in its holding in *Dawes*. In fact, *Dawes* begins in footnote 2 with:

> In response to a question from the court during oral argument, counsel for the government indicated that the government did not have a unified federal position regarding this issue. Given the fact that the issue is one of national scope which affects the tax revenues of the United States, we find this posture regrettable.

The *Dawes* Court actually held that:

> We would be inclined to follow the general analysis of Wunder[2] and Hicks[3]

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[2] *U.S. v. Wunder*, 919 F.2d 34 (6th Cir. 1990)

[3] *U.S. v. Hicks*, 947 F.2d 1356, 1359 (9th Cir. 1991).

and hold that the operation of the PRA in these circumstances did not repeal the criminal sanctions for failing to file an income tax return because the obligation to file is a statutory one. **However, we are not compelled to rest our opinion on the statutory origin theory** because we find the analysis of other courts which have considered the issue to be persuasive.

Id.at 1192

The *Dawes* Court finished by holding that:

We do not believe that Congress could have intended that the PRA repeal the statutory criminal penalty[4] for failing to file an income tax return because tax regulations and instructions lack OMB numbers. As noted above, the 1040 form has the necessary numbers and expiration date for any necessary compliance with the Act. The regulations and instructions, meaningless without a 1040 form to file, are regulations and instructions aimed at a purpose: the proper completion of the 1040 form. **As**

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[4]This "repeal" theory is nonsense as no person would need be protected from penalties if the penalties were repealed. There has to be a valid penalty in order for the protection to apply.

long as the 1040 form complies with the Act, nothing more is required.

In 1944, this Court told the entire United States of America in *CIR v. Lane-Wells Co.*, 321 U.S. 219, 223 (1944) "Congress has given discretion to the Commissioner to prescribe **by regulation forms** of returns and has made it the duty of the taxpayer to comply." No mandate language here by the Court.

In 1976 this Court entered its decision in *Garner v. U.S.* 424 U.S. 648, 655-656 (1976) in which it held that our "system is undermined when a government deliberately seeks to avoid the burdens of independent investigation by compelling self-incriminating disclosures." There simply can be no objection to the fact that information that each member of the public provides in answering questions advanced by one agency or another can lead to that information being used against the Taxpayer in ways unrelated to taxes.

In 1980, Congress passed the Paperwork Reduction Act of 1980 ("1980 PRA") which required all requests for information by a Federal Agency to the Public, including the Internal Revenue Service ("IRS"),

obtain written permission to seek such information. The permission would then be certified by among other things displaying a "current OMB control number." See 44 U.S.C. § 3512(1980)

Beginning in 1981, request Form 1040 began displaying OMB # 1545-0074. This number remains the displayed number on request Form 1040 through 2006 requests made by the IRS.[5]

The Supreme Court In *Dole v. United Steelworkers*, 494 U.S. 26, 33 (1990), in citing to the Senate Report for the 1980 PRA, stated " Typical information collection requests include tax forms..." No mandating theory here.

Beginning in the late 1980s, cases began to appear in United States District Courts around the Country, mostly criminal cases, where the Defendant raised, as a defense to claims of willful failure to provide income tax information to the IRS on request

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[5]In 2006, for Calender Year 2005, IRS began illegally placing 1545-0074 on numerous requests such as Forms 1041, 2555, 140ES, 1040NR, W-4, all of which prior to 2006 maintained their own specific OMB control number.

Form 1040, an alleged violation of 26 U.S.C. § 7203, that because the Form 1040 and its Instruction Booklet were interconnected, and since the Instruction Booklet for Form 1040 did not display any OMB Control Number, the Defendant in each of those cases could not, as the argument goes, be penalized based upon the direct words Congress subscribed in 44 U.S.C. § 3512(1980).[6]

These cases arrived in the Appellate Courts just after this Court announced its decision in *Dole*, at 32-33. All of the United States Circuit Courts were in agreement that the Instruction Booklets need not display any OMB control number since they did not qualify as a request for information under the 1980 PRA.[7] See *U.S.v. Wunder*, 919 F.2d 34, 38 (6th Cir. 1990); *U.S. v. Hicks*, 947 F.2d 1356, 1359 (9th Cir. 1991);

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[6]Notwithstanding any other provision of law, no person shall be subject to any penalty for failure to maintain or provide information...."

[7]Something the Dawes Court said would not "repeal" the criminal sanctions was instruction booklets and regulations not displaying valid OMB control numbers. The *Dawes* Court specifically rejected the statutory origin theory.

U.S. v. Dawes, 951 F.2d 1189, 1193 (10th Cir. 1991); *U.S. v. Holden*, 963 F.2d 1114 (8th Cir. 1992); *Salberg v. U.S.* 969 F.2d 379, 384 (7th Cir. 1992); *U.S. v. Neff*, 954 F. 2d 698, 699-700 (11th Cir. 1992), *U.S. v. Kerwin*, 945 F.2d 92 (5th Cir. 1991)

However, these same Circuits were not in agreement on whether the request Form 1040 was required to be in compliance with the 1980 PRA in order for criminal penalties to be imposed for willful failure to provide information timely to the IRS on said request. See 26 U.S.C. § 7203.

Wunder (6th), Hicks (9th), Salberg(7th), Neff (11th) and *Kerwin (5th)* held the 1980 PRA did not excuse the failure to provide information on request Form 1040 when criminal penalties were sought by the United States under a "mandate by statute, not by regulation" theory. *Dawes (10th)* and *Holden(8th)* held they did not subscribe to the "statutory origin theory" and held "as long as the 1040 complies with the act nothing more is required." *Id.* at 1193

The division of the Circuits on the reach of the 1980 PRA in regard to request Form 1040 really heated up when the 10th Circuit entered its decision in *U.S. v.*

Collins, 920 F.2d 619, 630-31(fn.12), which the 9th Circuit in *U.S. v. Bentson*, 947 F.2d 1353 (1991)[8] suggested "that persons charged with criminal violations of the Internal Revenue Code might in some circumstances legitimately raise a PRA defense. For reasons given in *Hicks*, the *Bentson* Court stated they "believe that the PRA was not intended to provide such a defense, and therefore we disagree with the *Collins* court's dicta." *Bentson*, at 1355

What even appeared more bazar was that this division amongst the Circuits in each of the mandate by "statute" Circuit decisions is that none of the statutory mandating theories were the same. For instance, in *Wunder (6th)* the theory was 26 U.S.C. § 6012 and 7203 together. In *Hicks (9th)* it was section 7203 at pg. 1159 and section 6012 at 1160. The *Hicks* Court even stated that they could "suppose that the duty to file tax returns can be understood only with reference to regulations." Id. at 1160 In *Salberg (7th)* the statute that required Salberg to answer the questions on request Form 1040 was held to be

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[8]Decided the same day as *Hicks*, (9th Cir.1991)

section "7203" by itself. *In Neff (11th)* it was held that section 6012 by itself mandated the duty to answer the IRS questions propounded on request Form 1040. And in *Kerwin (5th) it was* the vague *"statutes"* which required the duty to provide answers on the Government blank.[9]

Then there is the words of the Commissioner of the IRS who every year publicly stated since the enactment of the 1980 PRA that the duty to answer the IRS's questions come from a combination of sections "6001,6011, 6012(a) AND THEIR REGULATIONS[10]." No mention of 7203.

OMB's opinion cannot be left out which says at 5 CFR 1320.6 that 26 U.S.C. § 6011 by itself is the mandating provision which reads:

> "When required by regulation proscribed Blank was the term used to describe the

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[9]Blank was the term used to describe the request in *United States* v. *Sullivan*, 274 U.S. 259, 264 (1927) "He could not draw a conjurer's circle around the whole matter by his own declaration that to write any word upon the government ***blank*** would bring him into danger of the law."

[10]Emphasis added.

> request in *United States v. Sullivan*, 274 U.S. 259, 264 (1927) "He could not draw a conjurer's circle around the whole matter by his own declaration that to write any word upon the government ***blank*** would bring him into danger of the law." by the Secretary every person made liable....".

In 1991, while addressing the mens rea element in Criminal Tax charges under 26 U.S.C. § 7201 and 7203, the Supreme Court stated in *Cheek v. U.S.*, 498 U.S. 192, 199-200 (1991) that an exception to ignorance of the law not being and excuse for a violation of the law was provided by Congress because of the "proliferation of statutes and regulations" making "it difficult for the average citizen to know and comprehend the extent of the duties and obligations imposed by the tax laws."

In a letter to the Public written by the Commissioner of the IRS in January 1993 for the year 1992, Mrs. Peterson told the public they "were among the millions of Americans that comply with the tax law voluntarily." In 1993, Commissioner Richardson told the pubic America's system was the most effective system of "voluntary compliance in the world."

In 1995, Congress enacted the Paperwork Reduction Act of 1995, with the purpose for amending the 1980 PRA to clarify that it originally was enacted to among other things, "eliminate exemptions" for the "Internal Revenue Service". *House Report, 104-13, [page 8] at 171 (1995)*. The only reason it was modified to add certain terms was to maintain consistency and clarity and to "**unequivocally cover all collections of information.**" *House R. [page 54] at 217. (Emphasis added)*. The House also reported that it disagreed with the *Dole* decision in regard to whether Third Party requests were exempt under the 1980 PRA.

The changes were that Congress was being clear and demanded the IRS requests to be:

> (i) inventoried, displays a control number and, if appropriate, an expiration date;
> (ii) indicate the collection is in accordance with the clearance requirements of section 3507; and;
> (iii) informs the person receiving the collection of information of;
>
> > (I) the reasons the information is being collected;
> > (II) the way such information is to be used;

> (III) an estimate, to the extent practicable, of the burden of the collection;
> (IV) **whether the responses** to the collection of information **are voluntary, required to obtain a benefit, or mandatory**; and
> () the fat that an agecy may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number

See 3506(c)(1)(B).

IRS did not attempt to comply with the 1995 Changes within their request Form 1040 for 1995 in January of 1996. In 1997, for the request Form 1040 of 1996, the IRS made no changes to the request Form 1040 demanded by Congress pursuant to 44 U.S.C. §§§ 3506(c)(1)(B), 3507 and 3512(1995), but did make changes to the Instruction Booklet for request Form 1040 for 1996[11] which every Circuit Court agreed was not subject to the 1980 PRA.[12]

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[11] And every year since 1996.

[12]Even if the 1995 PRA could be construed to alter this theory no OMB control number is displayed on any Instruction Booklets no matter which request iis at issue.

A simple comparison between 44 U.S.C. § 3506(c)(1)(B), 3507, 3512(1995) and the request Form 1040 for years 1995 through 2006, and this Court can clearly see that the request is bootleg and outlaw.

One of the critical issues involving the defect of the request Form 1040 is "the way such information is to be used" as this goes to the heart of the *Garner* decision and one of the reasons for the disclosure requirement in the PRA in the first place[13]. It does not indicate it is in accordance with the clearance requirements of section 3507. No mandatory and no voluntary. No statement that a person does not have to respond unless the form displays a valid OMB control number issued in accordance with "this subchapter." See 3512(a) and 3506(c)(1)(B)(iii)(IV)(1995).

The Supreme Court restated in *U.S. v. Hubbell,*

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[13]The Supreme Court in *Garner* said that Garner was the only person that would know if the disclosures on the request Form would tend to incriminate him. Today we have the electronic age and information can be given for one reason and used for another as was done in the *Garner* case by convicting him of illegal Gambling.

530 U.S. 27, 35 (2000) that "incriminating evidence may be the by-product of obedience to a ***regulatory requirement***, such as filing an income tax return,.."

The "mandate by statute" theory was rejected by the Tenth Circuit in *Dawes* to which the District Court in Springer III stated *Dawes* held otherwise. The Panel chose to apply "*ejusdem generis*" to decide "complete defense, bar, or otherwise" means only defense. Such a construction is contrary to statutory construction. Interpretation must be given full effect to the entire statute, not merely a foot note. *Kawaauhau v. Geiger*, 523 U.S. 57, 62 (1998) ("[W]e are hesitant to adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law." (citing *Mackey v. Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825, 837 (1988)))

The D.C. Circuit in *Saco River Cellular, Inc., v FCC*, 133 F. 3d 25,31 (D.C. Cir. 1998) held that the protection provided by section 3512 precluded by "5 C.F.R. 1320.6(e)" "'does not extend to situations in which a statute authorizes, or directs, an agency to impose a collection of information on persons, and

the agency does so.

In *Califano v. Sanders*, 430 U.S. 99, 105 (1977) this Court said:

> "On October 21, 1976, Congress enacted Pub. L. 94-574, 90 Stat. 2721, which amends 28 U.S.C. § 1331 (a) to eliminate the requirement of a specified amount in controversy as a prerequisite to the maintenance of "any [§ 1331] action brought against the United States, any agency thereof, or any officer or employee thereof in his official capacity." The obvious effect of this modification, subject only to preclusion-of-review statutes created or retained by Congress, is to **confer jurisdiction on federal courts to review agency action**...."

Springer III clearly sought the district court to review Agency action with regard to the IRS request Form 1040 and to that the Panel, disagreeing with the district court's main reasons for dismissal, held none of the provisions cited by Petitioner in his Complaint conferred such jurisdiction over the subject matter of the Complaint in Springer III. The Panel rejected the holding by the district court regarding the statutory origin mandate without so much as a word on the

position taken by the district court. The Panel sanctions Petitioner for not accepting the district court decision even though it rejected all but the last sentence as it was clearly contrary to numerous decisions by the Tenth Circuit and this Supreme Court. The Panel even attempts to restrict Petitioner's right to appeal because Petitioner always loses.

2. **The Panel decision in Springer III conflicts with *CIR v. Lane-Wells Co.*, 321 U.S. 219, 223 (1944), *Dole v. United Steelworkers*, 494 U.S. 26, 33-40 (1990), *U.S. v. Hubbell*, 530 U.S. 27, 35 (2000) regarding the requirement to provide answers to the IRS on its requests stems from a regulatory requirement.**

In *CIR v. Lane-Wells Co.*, 321 U.S. 219, 223 (1944), the Supreme Court said "Congress has given discretion to the Commissioner to prescribe **by regulation forms** of returns and has made it the duty of the taxpayer to comply. In *Dole v. United Steelworkers*, 494 U.S. 26, 33-40 (1990) this Court said tax forms were "typical information requests" and in *U.S. v. Hubbell*, 530 U.S. 27, 35 (2000) this Court said "incriminating evidence may be the by-product of obedience to a ***regulatory requirement***, such as filing

an income tax return,.."

The District Court held that the requirement derived from a "mandate by statute" and "not by regulation" citing to the 10th Circuit in *U.S. v. Dawes*, 951 F.2d 1189, 1193 (10th Cir. 1991). App. 7 Though the Panel did not affirm on this basis it did not address the issue and the decision is a published decision.

As presented more fully above, the theories of IRS exemption and non exemption range from this Court's holding it is a "regulatory requirement", to 26 U.S.C. § 7203 by itself (7th Cir. Salberg), 26 U.S.C. § 6011 by itself (OMB), 26 U.S.C. § 6012 by itself (11th Cir. Neff), 26 U.S.C. § 6012 and 7203 together (6th Cir. Wunder)(9th Cir. Hicks, Bentson), 26 U.S.C. §§§ 6001, 6011, 6012(a) and their regulations (Commissioner of IRS) to the Form 1040 does have to comply rejecting the "statutory origin theory" (10th Cir. Collins, Dawes)(8th Cir. Holden).

The D.C. Circuit again said in *Saco River Cellular, Inc.* the protection provided by section 3512 precluded by "5 C.F.R. 1320.6(e)" "'does not extend to situations in which a statute authorizes, or directs, an agency to impose a collection of information on

persons, and the agency does so.' Controlling Paperwork Burdens on the Public; Regulatory Changes Reflecting Recodification of the Paperwork Reduction Act, 60 Fed. Reg. 30438, 30441 (1995). *Saco, Supra*

3 The Panel decision in Springer III conflicts with both *Dole v. United Steelworkers*, 494 U.S. 26, 33-40 (1990) and the plain meaning of 44 U.S.C. § 3512(b)(1995) in which Congress employed the term "complete defense, bar, or otherwise" to explain the protections.

There can be no doubt that if a person cannot be subject to any penalty for failure to comply with an Agency request for information, as 44 U.S.C. § 3512(a) clearly states, then being prohibited from bringing an action to utilize the protection provided by 44 U.S.C. § 3512(b) makes 3512(a)'s mandate meaningless.

In *Dole v. United Steelworkers*, 494 U.S. 26 (1990) the Supreme Court directed the meaning and reach of the PRA of 1980 by saying:

> "While the grammar of this text can be faulted, its meaning is clear: **the public is protected under the Paperwork Reduction Act .... By its very terms, the statute's enforcement mechanism** does

> not apply to rules which require disclosure to a third party rather than to a federal agency."

Id. at 40

This Court also held "tax forms" were "typical information collection requests" subject to the Paperwork Reduction Act. Id. at 32-33 To this there is no dispute. 44 U.S.C. § 3506(c)(1)(B) requires the Director ensure all requests made by the IRS for information comply with criteria outlined therein.[14] So, "the public is protected" under the PRA and the PRA has an "enforcement mechanism" which applies to federal agencies. *Dole*, supra

The Panel cites to *Sutton v. Providence St. Joseph Med.Ctr.*, 192 F.3d 826, 844(9th Cir. 1999) for the holding that the "PRA authorizes its protection to be used as a defense. It does not authorize a private right of action." App.24 Without any explanation, the *Sutton* Court said:

> "As is apparent from subsection (b), the Act authorizes its protections to be used as a defense. The Act does not authorize a private right of action."

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[14]More fully outlined in the first issue.

The *Sutton* Court, as the Panel in Springer III agrees with, acknowledged that 44 U.S.C. § 3512(a)(1995) says "Not withstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information..." App.23

In Applying the "statutory cannon" of "*ejusdem generis*" the Panel said that "or otherwise" in section 3512(b) "embraces only procedural devices similar to complete defenses or bars; the phrase does not function to expand subsection (b) into a right of action." App. 24

The maxim "*ejusdem generis*" does "not control...when the whole context dictates a different result." See *Circuit City Stores, Inc., v. Adams*, 532 U.S. 105, 115, citing *Norfolk & Western R. Co. v. Train Dispatchers*, 499 U.S. 117, 129 (1991)(listing out "several reasons the immunity provision cannot be interpreted to apply only to antitrust laws and similar statutes")

In *Saco River Cellular, Inc., v FCC*, 133 F. 3d 25,31 (D.C. Cir. 1998) Northeast Cellular brought the action against the FCC to which *Saco River Cellular* was the recipient of the licence the FCC took away

from Northeast after the FCC concluded its form for providing information of a "firm financial commitment" did not comply with the PRA of 1995. FCC was not the Plaintiff. If a person is to raise the PRA as a claim against the IRS they raise such a claim as a "Petitioner" administratively or if not in the Tax Court as Petitioner. They could also raise it as a complete defense but by no means is that the limitation.

Not only did the Tenth Circuit in *Pond v. CIR*, T.C. Memo 2005-255, WL 18928 decided 10911-02 (10th.1-4-07) agree Pond could raise the PRA as the Petitioner/Plaintiff in Tax Court, along with not forgetting who Plaintiffs were in *Saco River Cellular* (D.C. Cir. 1998), section 3512 and even the entire Paperwork Reduction Act mandate that "Not withstanding any other provision of law, no person shall be subject to any penalty..."

Characterizing "or otherwise" as a "defense" and intentionally jumping over "bar" produces the result that "no person shall be subject to any penalty" is meaningless because in order to raise the protection, as a defense only, the person would need

to be defending a penalty claim which they logically would have already been subjected to.[15]

How would the public be protected from being subject to any penalty if the protection can only be raised after an agency subjects a person to penalty?

Because "complete defense" leaves no defense outside its reach and because "bar, or otherwise," intends to allow the protection to be raised "at any time" and in any proceeding and manner, the Panel application of *ejusdem generis* is an incorrect application to the meaning "complete defense, bar or otherwise, at any time" and contrary to this Court's decision in *Circuit City Stores, Inc., v. Adams*, 532 U.S. 105, 115, citing *Norfolk & Western R. Co. v. Train Dispatchers*, 499 U.S. 117, 129 (1991)

4. The Panel in Springer III conflicts with another Panel of the United States Court of Appeals for the Tenth Circuit in *Pond v. CIR*, T.C. Memo

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[15]Springer I and II were during the IRS Administrative request for a Collection Due Process Hearing taken by Petitioner as a result of a Levy Notice Petitioner eventually received from Officer Rice. The Panel decision is silent on how its "defense" theory applied to that procedure other than its footnote on res judicata.

2005-255, WL 18928 decided 10911-02 (10th.1-4-07) which held Form 1040 was subject to the PRA and that Pond, as Petitioner, was authorized to claim protection provided in the United States Tax Court.

Another Panel of the Tenth Circuit in *Pond v. CIR*, T.C. Memo 2005-255, WL 18928 decided 10911-02 (10th.1-4-07) on January 4, 2007 that the protection could be raised by a Petitioner to Tax Court concluding though this position was at odds with the Tax Court's position that the PRA protection does not apply to the IRS finding it frivolous. *Pond* at pg. 3

The Commissioner tells the public they do not have to provide the information on a request not in compliance with the PRA and then just does not comply.

5. **The Panel in Springer III conflicts with the decision in *Saco River Cellular, Inc., v FCC*, 133 F. 3d 25,31 (D.C. Cir. 1998) which did not hold section "3512 may only be invoked as a defense"..**

The simple issue here is that the phrase "complete defense, bar, or otherwise, at any time" has been held by the Panel to only authorize defenses to subjection of penalties. Such a

construction renders the phrase "no person shall be subject to any penalty" meaningless.

6. **The Panel in Springer III applying the cannon of *ejusdem generis* conflicts with the Supreme Court in *Norfolk & Western R. Co. v. Train Dispatchers*, 499 U.S. 117, 129 (1991) which held that the "canon does not control, however, when the whole context dictates a different conclusion."**

The maxim "*ejusdem generis*" does "not control...when the whole context dictates a different result." See *Circuit City Stores, Inc., v. Adams*, 532 U.S. 105, 115, citing *Norfolk & Western R. Co. v. Train Dispatchers*, 499 U.S. 117, 129 (1991) There can be no question that the context of 44 U.S.C. § 3512 was intending to protect the public from being subject to any penalties contemplated by any Agency of Government for failure to comply with a request for information unless the form displays a valid OMB control number issued in accordance with the PRA.

7. **The Panel conflicts with *Wyoming Trucking Ass'n Inc. v. Bentsen*, 82 F.3d 930, 935 (10th Cir. 1996), citing to *Enochs v. Williams Packing Test*, 370 U.S. 1, 7, 82 S.Ct. 1125, 8 L.Ed.2d 292 (1961) which characterized claims as "Plaintiffs'....defense" to the "Anti-Injunction Act**

and the Declaratory Judgment Act argument".

Plaintiffs are required to defend against defense claims in litigation all the time. Yet the Panel holds the protection provided the public can only be raised as a defense and not as a private right of action. This construction is inconsistent with the words explaining the protection and its reach.

8 **The panel decision to Sanction Petitioner in Springer III should be reversed as the Panel filing restrictions are in opposition to 28 U.S.C. § 46 in that all appeals require a quorum of three justices.**

The Panel abused its position in imposing sanctions in the amount of $ 4,000.00 in Springer III and violate 28 U.S.C. § 46 by imposing filing restrictions against Petitioner, for appealing the Internal Revenue Service's abuse in refusing to comply with 44 U.S.C. §§§ 3506(c)(1)(B), 3507 and 3512? First, Springer III was primarily dismissed on the "statutory origin theory" to which the case cited by the district court did not therein agree.

In fact, the 9th Circuit in *Hicks* and *Bentson* identified the decision by the 10th Circuit in *Collins* as

to be a split of the Circuits. In *Dawes*, the Panel in that case, in footnote 2, spoke about the division of the Circuits. For the panel to say that because Petitioner believed the protection provided could be raised at any time, including as a "bar, or otherwise" was so frivolous as to impose $ 4,000.00 Sanctions for such appeal, defies logic and credibility. Then there is the filing restrictions. Besides those restrictions being absurd stemming from this case, 28 U.S.C. § 46 requires all reviews on appeal consist of three judges, including two from the Tenth Circuit not one.

CONCLUSION

Petitioner Lindsey K. Springer requests this Court issue Writ of Certiorari to the U.S. Court of Appeals for the Tenth Circuit on each issue raised herein and for the purpose of reversing the decision by the U.S. District Court for the Northern District of Oklahoma.

Respectfully Submitted

9-30-07 /s/ Lindsey K. Springer

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

LINDSEY K. SPRINGER,

Plaintiff,

v. **Case No. 06-CV-0110-CVE-PJC**

UNITED STATES, THE INTERNAL REVENUE SERVICE, and THE COMMISSIONER OF INTERNAL REVENUE SERVICE,

Defendants.

OPINION AND ORDER

Now before the Court for consideration is defendants' motion to dismiss (Dkt. # 15) for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1) and for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6). Also before the Court are plaintiff's motion for preliminary injunction (Dkt. # 6), plaintiff's motion for sanctions (Dkt. # 19), and plaintiff's motion for a temporary restraining order (Dkt. # 22). Plaintiff accuses defendants of willfully violating the Paperwork Reduction Act ("PRA"). Plaintiff asks the Court to order defendants to bring the United States Individual Income Tax Return, Form

1040, into compliance with the PRA.[1] Further, plaintiff alleges that defendants are not authorized to enforce tax laws due to their alleged failure to comply with the PRA, and he seeks to enjoin defendants from penalizing him or other individuals for willful failure to file income tax returns between 1982 and 2006. Defendants argue that plaintiff's complaint should be dismissed on several grounds: the Anti- Injunction Act ("AIA") of the Internal Revenue Code, 26 U.S.C. § 7421, prohibits individual [PAGE 1 ENDS] taxpayers from bringing an action in federal court to enjoin the assessment or collection of any federal tax; plaintiff has failed to establish that an exception to the AIA applies; and sovereign immunity bars plaintiff's claims. In the alternative, defendants argue that plaintiff has failed to state a claim because his interpretation of the PRA is without merit. Because the Rule 12(b)(1) argument is dispositive, there is no need to address

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[1]Plaintiff argues that Form 1040 and its variations (1040A, 1040EZ, and 1040ES) do not have valid Office of Management and Budget (OMB) numbers, in violation of the PRA.

defendants' Rule 12(b)(6) argument.

I.

In September 1996, the Internal Revenue Service ("IRS") issued two notices of deficiency to plaintiff asserting federal income tax deficiencies from 1990 to 1995. Springer v. United States, 2005 WL 2467775 (W.D. Okla. Oct. 6, 2005). Plaintiff filed a petition with the United States Tax Court ("Tax Court"), which found that plaintiff was liable for the documented deficiencies. In March 2005, the IRS sent plaintiff notice of its intent to levy and gave plaintiff information on his rights under the Internal Revenue Code. Plaintiff rightfully requested a collection due process hearing ("CDP hearing"). He then filed suit against the government in the United States District Court for the Western District of Oklahoma, disputing the amount of his income tax liability, the method by which the government assessed the amount owed, and the manner in which the IRS conducted its investigation. Id. The Western District of Oklahoma granted defendants' motion to dismiss for lack of subject matter jurisdiction and held that proper jurisdiction was in the Tax Court. Id.; see 26 U.S.C. §

6330(d). After the CDP hearing, plaintiff filed a second complaint in the Western District of Oklahoma asking for injunctive relief from the government. This action constitutes plaintiff's third attempt to enjoin the federal government from penalizing him for failing to file federal income tax returns.[PAGE 2 ENDS]

II.

Federal courts are courts of limited jurisdiction and, as the parties seeking to invoke federal jurisdiction, plaintiffs bear the burden of proving such jurisdiction is proper. Basso v. Utah Power & Light Co., 495 F.2d 906, 909 (10th Cir. 1974). A court lacking jurisdiction "cannot render judgment but must dismiss the cause at any stage of the proceedings in which it becomes apparent that jurisdiction is lacking." Id. Motions to dismiss under Rule 12(b)(1) "generally take one of two forms. The moving party may (1) facially attack the complaint's allegations as to the existence of subject matter jurisdiction, or (2) go beyond allegations contained in the complaint by presenting evidence to challenge the factual basis upon which subject matter jurisdiction rests." Merrill Lynch Business Financial Services, Inc. v. Nudell, 363 F.3d 1072, 1074

(10th Cir. 2004) (quoting Maestas v. Lujan, 351 F.3d 1001, 1013 (10th Cir. 2003) (internal citation and quotations omitted)). In analyzing a motion to dismiss on the basis of a facial attack on the sufficiency of the complaint, a court must presume all of the allegations contained in the complaint to be true. Ruiz v. McDonnell, 299 F.3d 1173, 1180 (10th Cir. 2002).

III.

Defendants assert the complaint is facially insufficient in that it fails to plead a claim over which federal courts have been granted jurisdiction. "As a general rule, a complaint is sufficient [under Fed. R. Civ. P. 8(a)(2)] if it sets forth 'a short and plain statement of the claim showing that the pleader is entitled to relief.'" United States v. Missouri-Kansas-Texas R. Co., 273 F.2d 474, 476 (10th Cir. 1959) (quoting Conley v. Gibson, 355 U.S. 41 (1957)). Plaintiff's complaint fails to set forth a jurisdictional basis for his claims.[PAGE 3 ENDS]

The AIA states that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against

whom such tax was assessed." 26 U.S.C. § 7421(a). There are statutory and judicial exceptions to the general bar against taxpayer lawsuits under the AIA. The United States has not consented to suits brought by taxpayers except under the express conditions set out in 26 U.S.C. §§ 7421 and 7422. The Supreme Court carved out a narrow exception to the AIA, whereby litigation is permitted if two criteria are met: under no circumstances would the government be certain of succeeding on the merits; and plaintiff would suffer irreparable harm with no adequate legal remedy absent injunction. Enochs v. Williams Packing & Navigation Co., 370 U.S. 1, 7 (1962) ("Only if it is then apparent that, under the most liberal view of the law and the facts, the United States cannot establish its claim, may the suit for an injunction be maintained."). Plaintiff fails to argue that his claims fall within an exception to the AIA but, rather, maintains that this action is outside the scope of the AIA. However, if successful, plaintiff's suit would restrain the collection of federal taxes by limiting defendants' ability to collect taxes due between 1982 to 2006. Thus, the AIA bars his claims unless they fall within an exception to

the AIA.

Plaintiff's complaint does not qualify for the judicial exception to the AIA because defendants are likely to succeed on the merits. Plaintiff's allegations rely on the language of the public protection provision of the PRA, which states that "no person shall be subject to any penalty for failing to comply with a collection of information . . . if the collection of information does not display a valid control number." 44 U.S.C. § 3512(a)(1). However, it is settled law that "the requirement to file a tax return is mandated by statute, not by regulation" and "such explicit statutory requirements are not subject to the PRA." United States v. Dawes, 951 F.2d 1189, 1191-92 (10th 1991)[2][PAGE 4 ENDS] The PRA was not designed to "repeal the statutory criminal penalty for failing to file

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[2]See also *James v. United States*, 970 F.2d 750 (10th Cir. 1992) (holding that the lack of an OMB number on IRS notices and forms does not violate the PRA); *United States v. Collins*, 920 F.2d 619 (10th Cir. 1990) (defendant's argument that Forms 1040 lacked expiration dates and, therefore, failed to comply with PRA is legally frivolous).
5Cir. 1991).

an income tax return because tax regulations and instructions lack OMB numbers." Id. at 1193. Further, the Secretary of Treasury and the IRS have clear authority to impose criminal and civil penalties related to Form 1040. 26 U.S.C. §§ 7801, 7803; see Londsdale v. United States, 919 F.2d 1440, 1444 (10th Cir. 1990) (dismissing plaintiff's claim that IRS lacked authority to enforce tax code after finding that the PRA "did not apply to the collection of information . . . during the conduct of . . . an administrative action or investigation involving an agency against specific individuals or entities" pursuant to 44 U.S.C. § 3518(c)(1)(B)(ii)). It is clear that defendants have meritorious defenses to plaintiff's allegations. Thus, plaintiff's claims do not fall within the judicial exception to the AIA. Plaintiff fails to argue that his claims are excepted under any of the statutory provisions. Accordingly, plaintiff's claims are barred by the AIA and he has failed to show that they fall within any exception to the AIA.

Further, plaintiff lacks authority to enforce the PRA. The PRA does not create a private right of action but, rather, serves as a defense. 44 U.S.C. § 3512(b);

see Fostvedt v. U.S., 978 F.2d 1201, 1202 (10th Cir. 1992). Plaintiff's complaint is dismissed for lack of subject matter jurisdiction, as it is not within the power of this Court to adjudicate his claims. [PAGE 5 ENDS]

IV.

IT IS THEREFORE ORDERED that defendants' motion to dismiss (Dkt. # 15) is **granted**, and plaintiff's complaint is **dismissed** for lack of subject matter jurisdiction.

IT IS FURTHER ORDERED that plaintiff's motion for preliminary injunction (Dkt. # 6), plaintiff's motion for sanctions (Dkt. # 19), and plaintiff's motion for temporary restraining order (Dkt. # 22) are **moot**.

DATED this 21st day of June, 2006.

/s/ Clair V. Eagan
Chief Judge United
States District Court

F I L E D
United States Court of Appeals
Tenth Circuit
May 1, 2007
Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

LINDSEY K. SPRINGER,

Plaintiff-Appellant,

v.

INTERNAL REVENUE SERVICE, ex rel. United States of America, by and through its Officers , and employeesFRED RICE; SCOTT PENNEY; LELAND BOWEN,

Defendants-Appellees.

No. 05-6387
(D.C. No. CIV-05-466-F)
(W.D. Okla.)

LINDSEY K. SPRINGER,

Plaintiff-Appellant,

v.

IRS, ex rel. United States of America, by and

No. 06-5123
(D.C. No. 06-CV-110-CVE-

PJC)
through its Officers and Employees, (N.D. Okla.)

Defendant-Appellee.

LINDSEY K. SPRINGER,

Plaintiff-Appellant,

v.

IRS byand through the United States of America; FRED RICE; SCOTT PENNEY; LELAND NEUBAUER,

No. 06-6268
(D.C. No. CV-05-1075-F)
(W.D. Okla.)

Defendants-Appellees.

[PAGE 1 ENDS]

ORDER AND JUDGMENT[1]

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[1]After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of these appeals. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). These cases are therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1

Before **HENRY**, **ANDERSON**, and **McCONNELL**, Circuit Judges.

Plaintiff Lindsey Springer, a tax protester, describes himself as the founder of "Bondage Breakers Ministries," organized in 1992, whose sole purpose is "to expose the violations of the written law committed by the Internal Revenue Service [(IRS)]." R., Doc. 1 at 5, ¶ 9.[2] He appeals from three separate judgments, two of which concern his liability for federal income taxes, penalties, and interest for 1990-1995 and the IRS's attempt to collect. His third appeal is a broader challenge to the IRS's general power to collect failure-to-file penalties for 1982-2006. We have combined the appeals for disposition. Because Springer appears pro se, we review his pleadings and other papers liberally and hold them [PAGE 2 ENDS] to a less stringent standard than those drafted by attorneys, but we do not act as his advocate. *See Hall v. Bellmon*, 935 F.2d 1106, 1110 & n.3 (10th Cir. 1991).

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[2] References to the record are to the record in appeal No. 05-6387 unless otherwise noted

Exercising jurisdiction under 28 U.S.C. § 1291, we affirm the district courts' judgments. Because the appeals are frivolous and brought for purposes of delay, we impose monetary sanctions on Springer. We also propose filing restrictions.

I. Background

The heart of these appeals represents Springer's latest push in a long campaign to challenge his liability for federal income taxes, penalties, and interest, and to delay collection. In 1996, the IRS sent Springer two notices of deficiency concerning unpaid income taxes for 1990 through 1995, years in which Springer filed no federal income tax returns. He challenged the notices in the United States Tax Court, arguing, among other things, that a tax on income amounts to involuntary servitude in violation of the Thirteenth Amendment and that the Sixteenth Amendment does not authorize the Commissioner of the IRS to collect taxes. In upholding the notices of deficiency, the Tax Court characterized Springer's arguments as "nothing but tax protester rhetoric and legalistic gibberish" and imposed a $4,000 sanction because the challenge was frivolous and made only for the

purpose of delaying collection. *See* R., Doc. 16, Ex. 5 at 2 (copy of *Springer v. Comm'r*, No. 26045-96 (T.C. Feb. 10, 1997) (unpublished)). We dismissed Springer's appeal of that decision because he had failed to pay a prior $2,000 sanction this court imposed in a separate frivolous appeal. *See* R., [PAGE 3 ENDS] Doc. 16, Ex. 6 (copy of *Springer v. Comm'r*, No. 97-9008 (10th Cir. Oct. 15, 1997) (unpublished order of dismissal)). The Supreme Court denied his petition for a writ of certiorari. *Springer v. Comm'r*, 524 U.S. 920 (1998).

On March 2, 2005, the IRS sent Springer a notice of intent to levy his assets in order to collect the tax liability adjudicated in the earlier proceeding. *See* R., Doc. 1, Ex. 9. The notice indicated that the amount owed, including penalties and interest, was $300,071.56. *Id.* at 2. Springer requested a pre-levy collection due process (CDP) hearing pursuant to 26 U.S.C. § 6330, arguing, among other things, that he earned no taxable income for 1990-1995, but was living off of gifts and donations; that the IRS improperly had determined the amount of his tax liability; and that a provision of the Paperwork Reduction Act of

1995 (PRA) protected him from any penalties arising from his failure to file tax returns for 1990-1995 because, he claimed, IRS Form 1040 and its variants lacked a valid control number from the Office of Management and Budget (OMB) for those years. The hearing officer assigned to the matter, defendant Scott Penney, informed Springer that he was entitled only to an unrecorded telephonic hearing because the claims he raised were frivolous, and that he would not be permitted to challenge his tax liability because he already had an opportunity to appeal that determination from the notices of deficiency.

On April 25, 2005, one day before the CDP hearing, Springer filed the action underlying appeal No. 05-6387. He asserted that the claimed tax [PAGE 4 ENDS] deficiencies were erroneous and requested a variety of injunctive relief, including that defendants provide an impartial hearing officer, record the hearing, and obtain verification that the underlying tax liability was computed in accordance with all applicable laws and administrative procedures as required by 26 U.S.C. § 6330(c)(1). He also sought an injunction directing the defendants to consider his

PRA defense and evidence of errors concerning the underlying tax liabilities, in particular that some of the liabilities were improperly derived from Bureau of Labor statistics and that some were based on a bogus Form 1099.

Defendants filed a motion to dismiss for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted. They argued that sovereign immunity applied; that the Anti-Injunction Act, 26 U.S.C. § 7421(a) (AIA), barred the relief Springer sought; that the Tax Court, not the district court, had exclusive jurisdiction over the CDP matter; that Springer could not use the CDP hearing to challenge the tax liabilities that the Tax Court had upheld; and that he had not exhausted his administrative remedies. Concluding that the AIA barred Springer's action, the district court dismissed the case for lack of subject matter jurisdiction. *See Springer v. United States*, No. 05-466, 2005 WL 2467775, at *2-4 (W.D. Okla. Oct. 6, 2005) (unpublished) (*Springer I*).

Meanwhile, Penney held the telephonic CDP hearing on April 26, 2005. On August 16, the Office of

Appeals issued notices of determination approving the proposed levy. Springer appealed those determinations in a separate suit filed [PAGE 5 ENDS] in federal district court on September 15, 2005, from which appeal No. 06-6268 arises. Defendants moved to dismiss for substantially the same reasons they advanced in their motion to dismiss in *Springer I*. The district court took judicial notice of its dismissal order in *Springer I*, which it characterized as a dismissal based on the Tax Court's exclusive jurisdiction over Springer's underlying income tax dispute, noted that the substance of *Springer I* and the second lawsuit concerned the same general claims, and dismissed the action on the ground that *Springer I* barred it under principles of res judicata. *See Springer v. United States*, No. 05-1075, 2006 WL 2265521, at *1 (W.D. Okla. Aug. 7, 2006) (unpublished) (*Springer II*). The court also concluded "that dismissal of this action is appropriate . . . for lack of subject matter jurisdiction for the reasons stated in Defendant's motion." *Id.* at *1 n.1.

The third appeal, No. 06-5123, arises from a case Springer filed on February 17, 2006, in which he alleged that he was "the subject of civil actions and

criminal investigations in the Northern District and Western District of Oklahoma" involving "the claim or threat of penalty by the [IRS] for failure to supply information upon an information request form labeled Form 1040." No. 06-5123, R., Doc. 1 at 9, ¶ 39. He asserted that IRS Form 1040 and its variants had not complied with the PRA since 1981 because the OMB number was invalid. On that basis, he requested a declaratory judgment concerning whether the IRS could, among other things, pursue any penalty, civil or criminal, for the [PAGE 6 ENDS] yeas 1982-2006, ostensibly against either him or others. He also sought a preliminary injunction against the alleged investigations into his failure to supply information on income tax returns. The district court dismissed the case for lack of subject matter jurisdiction under the AIA and because the PRA does not authorize a private right of action but acts as a defense. *See Springer v. United States*, 447 F. Supp. 2d 1235, 1238-39 (N.D. Okla. 2006) (*Springer III*).

II. Discussion

A. *Springer I* and *Springer II*

We have conducted a de novo review of the holding

in *Springer I* that the court lacked subject matter jurisdiction under the AIA, *see Ambort v. United States*, 392 F.3d 1138, 1140 (10th Cir. 2004), and affirm on that basis. We affirm *Springer II* on the ground that the Tax Court had exclusive jurisdiction over that case. *See United States v. Sandoval*, 29 F.3d 537, 542 n.6 (10th Cir. 1994) (explaining that we are free to affirm on any grounds for which there is a sufficient record to permit conclusions of law).

The AIA provides that, subject to certain statutory exceptions, "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed." 26 U.S.C. § 7421(a). The purpose of the AIA "is to permit the United States to assess and collect taxes alleged to be due without judicial intervention, and to require that the legal right to the disputed.[PAGE 7 ENDS] sums be determined in a suit for refund." *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 7 (1962). Because penalties and interest arising from the failure to pay taxes are assessed as taxes, *see* 26 U.S.C. § 6665(a)(2), the AIA

bars actions seeking to enjoin their assessment. *See Nuttelman v. Vossberg*, 753 F.2d 712, 714 (8th Cir. 1985) (per curiam) (holding that penalties and interest are subject to the AIA); *cf. Souther v. Mihlbachler*, 701 F.2d 131, 132 (10th Cir. 1983) (per curiam) (holding that civil penalties imposed under 26 U.S.C. § 6682 for making false statements in connection with withholding are taxes within the meaning of the AIA).

The statutory exception to the AIA that Springer raised in the district court is 26 U.S.C. § 6330(e)(1).[3] Section 6330(e)(1) permits a party to seek injunctive relief in a proper court when the IRS initiates a levy during the statutory period of suspension that is triggered by the request for a CDP hearing. *Hart v.*

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[3] In relevant, part, 26 U.S.C. § 6630(0(e)(1) provides: [I]f a [CDP] hearing is requested under subsection (a)(3)(B), the levy actions which are the subject of the requested hearing . . . shall besuspended for the period during which such hearing, and appeals therein, are pending. Irı no event shall any such period expire before the 90th day after the day on which there is a final determination in such hearing. Notwithstanding the provisions of section 7421(a), the beginning of a levy or proceeding during the time the suspension under this paragraph is in force may be enjoined by a proceeding in the proper court, including the Tax Court.

United States, 291 F. Supp. 2d 635, 645 (N.D. Ohio 2003). Contrary to Springer's [PAGE 8 ENDS] argument, the exception is not triggered by the mere issuance of a notice of intent to levy. As the district court correctly determined, Springer had not alleged that the IRS had begun to levy his assets during the pendency of his CDP hearing, and the record indicates that the IRS had in fact suspended collections. Thus, Springer failed to bring himself within this statutory exception.[4]

Springer also relied on a judicially created exception to the AIA that allows an injunction if it is clear that "under no circumstances could the Government ultimately prevail" and if equity jurisdiction otherwise exists, *see Enochs*, 370 U.S. at 7. Springer cannot meet either of these requirements. The government ultimately could prevail in levying

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[4]The district court also concluded that to the extent he relied on the § 6330(e)(1) exception, Springer had brought his claims in the wrong court. Because we agree that the IRS had suspended its collection activities and therefore Springer could not invoke the exception, we need not address the district court's alternate conclusion

Springer's assets because the issue of his income tax liability for 1990-1995 was finally determined in his earlier suit, 26 U.S.C. § 6331(a) authorizes the IRS to impose the levy, and the levy could be sustained if the CDP hearing comported with applicable law. As to the second requirement, an adequate remedy at law will preclude the exercise of equity jurisdiction. *See Wyo. Trucking Ass'n v. Bentsen*, 82 F.3d 930, 935 (10th Cir. 1996). Springer cannot show the absence of an adequate legal remedy. To the contrary, he already has availed himself of an adequate legal remedy [PAGE 9 ENDS] concerning his liability—he litigated in the Tax Court and lost. Additionally, his ability to appeal the result of the CDP hearing under 26 U.S.C. § 6330(d)(1) provides him with an adequate legal remedy concerning the levy procedure.

Springer II was an appeal from the notices of determination issued at the conclusion of the CDP hearing. Springer, however, brought the appeal in the wrong court. Under the statute as it read at the time he filed *Springer II*, he was required to bring his appeal in the Tax Court, not the district court, because the underlying tax liability concerned

income taxes. *See* 26 U.S.C. § 6330(d)(1) (2000) (providing that an appeal of a CDP determination must be brought to the Tax Court if it has jurisdiction of the underlying tax liability);[5] *Voelker v. Nolen*, 365 F.3d 580, 581 (7th Cir. 2004) (per curiam) (Tax Court has jurisdiction over appeals from CDP hearings involving income taxes); *accord Marino v. Brown*, 357 F.3d 143, 146 (1st Cir. 2004) (per curiam). For this reason, the district court lacked subject matter jurisdiction, and we need not address the preclusive effect of *Springer I* on *Springer II*. Springer's argument that one of the notices of determination directed him to appeal to a United States District Court does not defeat the fact that the district court lacked jurisdiction. Parties cannot confer [PAGE 10 ENDS] subject matter jurisdiction on a federal court by their actions. *Prier v. Steed*, 456 F.3d 1209, 1214 (10th Cir. 2006)[6]

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[5]In 2006, Section 6330(d)(1) was revised to direct all appeals from 4 m CDP hearings to the Tax Court. *See* Pub. L. No. 109-280, § 855(a), 120 Stat. 780, 1019 (2006). The revision does not affect our review.

[6]In view of our jurisdictional disposition, we do not reach the merits 5 of *Springer I* and *Springer II*. But we note that

B. *Springer III*

In *Springer III*, Springer requested declaratory and injunctive relief based on the public protection provision of the PRA, which he claimed precluded the IRS from collecting any penalties arising from his failure to file a federal income tax return for calendar years 1982 through 2006. Exercising de novo review, *see Karr v. Hefner*, 475 F.3d 1192, 1200 (10th Cir. 2007) (question of statutory construction reviewed de novo), we affirm the district court on the ground that the PRA creates a defense, not a private right of action, and

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res judicata, which we may raise sua sponte, would bar those actions to the extent Springer challenges the fact of his liability for income taxes, interest, and penalties for 1990-1995. *See Arizona v. California*, 530 U.S. 392, 412 (2000) (holding that sua sponte application of res judicata is appropriate in "special circumstances," including when court is on notice that it has previously decided a matter); *United States v. Sioux Nation of Indians*, 448 U.S. 371, 433 (1980) (Rehnquist, J., dissenting) (explaining that res judicata is a doctrine adopted by the courts to prevent litigants from unduly consuming the time of the courts by seeking to relitigate matters already decided); *MACTEC, Inc. v. Gorelick*, 427 F.3d 821, 831 (10th Cir. 2005) (setting forth test for application of res judicata). Springer's barred challenge to his tax liability for 1990-1995, which has unduly consumed judicial resources, lends further support for the filing restrictions we propose below

therefore we need not reach the alternate basis for the district court's disposition, that the AIA barred the action. [PAGE 11 ENDS]

The PRA's public protection provision is 44 U.S.C. § 3512. It states:

> (a) Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information that is subject to this subchapter if–
> (1) the collection of information does not display a valid control number assigned by the Director [of the OMB] in accordance with this subchapter; or
> (2) the agency fails to inform the person who is to respond to the collection of information that such person is not required to respond to the collection of information unless it displays a valid control number.
> (b) The protection provided by this section may be raised in the form of a complete defense, bar, or otherwise at any time during the agency administrative process or judicial

action applicable thereto.

44 U.S.C. § 3512. The question is whether subsection (b) of the statute provides a right of action or only a defense. The Ninth Circuit has stated that it "is apparent from subsection (b)" that the PRA "authorizes its protections to be used *as a defense*. [It] does not authorize a private right of action." *Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 844 (9th Cir. 1999). We agree. In subsection (b), the meaning of the phrase "defense, bar, or otherwise" is the pivotal consideration. Applying the statutory canon of *ejusdem generis*, we readily conclude that "or otherwise" in § 3512(b) embraces only procedural devices similar to complete defenses or bars; the phrase does not function to expand subsection (b) into a right of action. *See Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 114-15 (2001) (explaining that *ejusdem generis* is "the [PAGE 12 ENDS] statutory canon that where general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words") (quotation and alteration

omitted).

Our conclusion is supported by the language that follows "defense, bar, or otherwise." Although, as Springer points out, that language permits the defense to be raised "at any time," it may only be raised at any time "during the agency administrative process" or in a "judicial action applicable" to that process. 44 U.S.C. § 3512(b). Thus, § 3512 may only be invoked as a defense "at any time during ongoing proceedings." *Ctr. for Auto Safety v. Nat'l Highway Traffic Safety Admin.*, 244 F.3d 144, 150 (D.C. Cir. 2001) (discussing *Saco River Cellular, Inc. v. F.C.C.*, 133 F.3d 25, 31 (D.C. Cir. 1998)).

Springer did not raise the PRA as a defense or in a judicial action applicable to any agency administrative process. Rather, he raised it as a claim in an independent action, a fact that is underscored by the relief sought under the PRA—an injunction against conduct alleged to have occurred in connection with other pending civil actions and criminal investigations. Because § 3512(b) does not provide a right of action, the district court properly dismissed the case. [PAGE 13 ENDS]

III. Monetary Sanctions and Filing Restrictions

A. Monetary Sanctions

Defendants have filed motions for sanctions in appeal No. 05-6387 (from *Springer I*) and appeal No. 06-5123 (from *Springer III*), each of which requests a flat fee of $8,000 to compensate them for attorney's fees and costs in defending what they argue are frivolous appeals. Springer thus has had notice and an opportunity to respond, as required by *Braley v. Campbell*, 832 F.2d 1504, 1514 (10th Cir. 1987). This court has the power to award just damages and single or double costs if the court "determine[s] that an appeal is frivolous" or brought for purposes of delay. Fed. R. App. P. 38; 28 U.S.C. § 1912. "An appeal is frivolous when the result is obvious, or the appellant's arguments of error are wholly without merit." *Braley*, 832 F.2d at 1510 (quotation omitted).

We determine that appeal No. 05-6387 and appeal No. 06-5123 are frivolous and brought for purposes of delay. When the IRS issued its notices of deficiency in 1996, Springer had two options, to pay

the tax and sue for a refund under 26 U.S.C. § 7422 or to petition the Tax Court for a redetermination under 26 U.S.C. § 6213(a). *See Taylor v. Allan*, 204 F.2d 485, 486 n.4 (10th Cir. 1953). He chose the latter option, and the Tax Court ruled against him, a judgment that is now incontestable. When the IRS issued its notice of intent to levy, Springer properly requested a CDP hearing, but he challenged that hearing in a jurisdictionally defective action, *Springer I*, then took a frivolous appeal from the [PAGE 14 ENDS] dismissal of that action. *Springer III* was dismissed as a procedurally improper means of challenging the government's power to impose penalties arising from the failure to file federal income tax returns for 1982-2006, and his appeal from that dismissal also was frivolous. Moreover, many of his arguments take issue with the fact of his underlying liability for 1990-1995, a fact that is no longer open to challenge. Accordingly, we conclude that the results in appeal No. 05-6387 and appeal No. 06-5123 are obvious, that Springer's arguments are wholly without merit, and that these appeals were brought to delay further the collection of his federal income tax liability for 1990-1995.

Defendants' motions, therefore, have a sound basis.[7]

In support of their requests for a flat fee of $8,000 in both *Springer I* and *Springer III*, defendants state that "[a]ccording to the records of the Tax Division of the Department of Justice, the average expense in attorney salaries and other costs incurred by this office in the defense of frivolous taxpayer appeals in which sanctions were awarded during 2004 and 2005 is approximately $11,042." No. 05-6387, Appellees' Mot. for Sanctions at 7; *see also* No. 06-5123, Appellees' Mot. for Sanctions at 5-6 (substantially the same). We granted a similar request for $8,000 in *Kyler v. Everson*, 442 F.3d 1251, 1253-54 (10th Cir. 2006) [PAGE 15 ENDS] . But under the unique circumstances of *Springer I* and *Springer III*, we conclude that just damages are $4,000 for each of

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[7]Like *Springer I*, *Springer II* was a jurisdictionally defective challenge 6 to the CDP hearing, and the appeal from *Springer II* also is frivolous. Because the government has not asked for sanctions in that appeal, we base our award of monetary sanctions on the other two appeals

the two appeals, for a total of $8,000.[89] *See Stafford v. United States*, 208 F.3d 1177, 1179 (10th Cir. 2000) (granting request for $4,000 sanction in frivolous tax appeal). We expressly note that this award is not meant to establish a presumptive or flat-fee sanction to be used in all frivolous tax appeals.

B. Filing Restrictions

Federal courts have the inherent power under 28 U.S.C. § 1651(a) to regulate the activities of abusive litigants by imposing carefully tailored restrictions under appropriate circumstances. *See Winslow v. Hunter (In re Winslow)*, 17 F.3d 314, 315 (10th Cir. 1994) (per curiam); *Tripati v. Beaman*, 878 F.2d 351, 352

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[8]Although we have remanded cases to the district court to make findings 7 of fact related to an award of just damages, *see, e.g., Beilue v. Int'l Bhd. of Teamsters, Local No. 492*, 13 F. App'x 810, 815 (10th Cir. 2001) (unpublished), Springer has not opposed the amount that defendants request, and remand therefore is unnecessary. (We cite *Beilue* for informational purposes only, not as precedent. *See* 10th Cir. R. 32.1(A).)

(10th Cir. 1989) (per curiam). Injunctions restricting further filings are appropriate where (1) the litigant's lengthy and abusive history is set forth; (2) the court provides guidelines as to what the litigant may do to obtain its permission to file an action; and (3) the litigant receives notice and an opportunity to oppose the court's order before it is implemented. *See Tripati*, 878 F.2d at 353-54. [PAGE 16 ENDS]

As discussed above, these combined appeals are frivolous. Additionally, Springer has a long history of filing meritless federal actions and appeals pro se. We found his first tax appeal frivolous and imposed a $2,000 sanction. *See Springer v. IRS*, Nos. 95-5072 & 95-5142, 1996 WL 164459 (10th Cir. Apr. 8, 1996) (unpublished). We dismissed four other tax-related appeals because Springer had not paid that sanction. *See Springer v. United States*, No. 98-5056 (10th Cir. June 15, 1998) (unpublished order of dismissal); *Springer v. United States*, No. 97-5095 (10th Cir. Oct. 16, 1997) (unpublished order of dismissal); *Springer v. United States*, No. 97-5093 (10th Cir. Oct. 16, 1997) (unpublished order of dismissal); *Springer v. Comm'r*, No. 97-9008 (10th Cir. Oct. 15, 1997)

(unpublished order of dismissal). In yet another tax case where Springer was a plaintiff but not an appellant, we noted the district court had properly granted summary judgment against the plaintiffs on their claim that federal taxation amounted to involuntary servitude and imposed monetary sanctions for the frivolous appeal. *See Buckner v. United States*, No. 98-5057, 1999 WL 61071, at *1 (10th Cir. Feb. 4, 1999) (unpublished). And as noted above, the Tax Court imposed a $4,000 sanction for Springer's frivolous appeal from the notices of deficiency concerning his 1990-1995 income tax liability.

Springer has not found any more litigation success outside of the tax arena. In *Springer v. Alabama*, we imposed a $1,000 sanction on Springer for filing a frivolous appeal of the district court's dismissal, on sovereign immunity grounds, [PAGE 17 ENDS] o f his claim that the respective ballot laws of all fifty states violated his constitutional right to run for president. *See* No. 99-5227, 2000 WL 305492, at *1 (10th Cir. Mar. 24, 2000) (unpublished). He also brought a similar suit against the election officials of all fifty states. In that case, we affirmed the district court's

dismissal because Springer had failed to identify a legal theory entitling him to relief, *see Springer v. Balough*, No. 00-5071, 2000 WL 1616246, at *2 (10th Cir. Oct. 30, 2000) (unpublished), and we later affirmed the district court's assessment of costs against him, *see Springer v. Rancourt*, 17 F. App'x 824, 826 (10th Cir. 2001). We summarily affirmed the district courts' dismissal of Springer's libel and slander claims in *Springer v. The Infinity Group Co.*, No. 98-5182, 1999 WL 651391, at*2 (10th Cir. Aug. 26, 1999). And we affirmed the dismissal of another case in which Springer asserted that the defendants had breached a contract to pay a $1,000,000 reward for information leading to the arrest and conviction of anyone involved in the assassination of President John F. Kennedy on the ground that Springer had sued the wrong defendant. *See Springer v. Hustler Magazine*, No. 99-5117, 1999 WL 979242, at *2 (10th Cir. Oct. 28, 1999) (unpublished).

In view of his abusive pattern of filing frivolous or malicious actions and appeals pro se, we must restrict Springer's access to the courts. "The right of access to the courts is neither absolute nor unconditional, and

there is no constitutional right of access to the courts to prosecute an action that is frivolous [PAGE 18 ENDS] or malicious." *Winslow*, 17 F.3d at 315 (quotation and alteration omitted). "[W]here, as here, a party has engaged in a pattern of litigation activity which is manifestly abusive, restrictions are appropriate." *Id.* (quotation omitted).

Our filing restrictions must be narrowly tailored. *See Tripat* , 878 F.2dat 352. But as our review indicates, Springer has not limited the scope of his baseless attacks to the tax arena or a particular set of defendants. Thus, Springer's litigation history does not present circumstances similar to those we recently considered in *Sieverding* v. *Colorado Bar Association*, 469 F.3d 1340, 1345 (10th Cir. 2006), where we modified a district court's filing restrictions by limiting them to filings against only those persons and entities against whom the plaintiff had a history of proceeding, without regard to subject matter. Therefore, subject to Springer's opportunity to object, as described below, we propose the following reasonable filing restrictions on future filings by Springer "commensurate with our inherent power to

enter orders 'necessary or appropriate' in aid of our jurisdiction." *Winslow*, 17 F.3d at 315 (quoting 28 U.S.C.§ 1651(a)).

Springer is ENJOINED from proceeding in this court as a petitioner in an original proceeding or as an appellant in a civil matter (except in these combined appeals) unless he is represented by a licensed attorney admitted to practice in this court or unless he first obtains permission to proceed pro se. To obtain permission to proceed pro se, Springer must take the following steps: [PAGE 19 ENDS]

1. File a petition with the clerk of this court requesting leave to file an original proceeding or to proceed pro se on appeal. If Springer seeks to proceed pro se on appeal, he must file the petition with the clerk of this court not more than ten days after filing his notice of appeal in the district court;

2. Include in the petition the following information:

A. A list of all lawsuits currently pending or filed previously with this court, including the name, number, and citation, if applicable, of each case, and the current status or disposition of the appeal or

original proceeding; and

B. A list apprising this court of all outstanding injunctions or orders limiting Springer's access to federal court, including orders and injunctions requiring him to seek leave to file matters pro se or requiring him to be represented by an attorney, including the name, number, and citation, if applicable, of all such orders or injunctions; and

3. File with the clerk of this court a notarized affidavit, in proper legal form, which recites the issues Springer seeks to present, including a short discussion of the legal basis asserted therefor, and describing with particularity the order being challenged. The affidavit also must certify, to the best of Springer's knowledge, that the legal arguments being raised are not frivolous or made in bad faith, that they are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, that the appeal or other matter is not interposed for any improper purpose such as delay [PAGE 20 ENDS] or to needlessly increase the cost of litigation, and that he will comply with all appellate and local rules of this court. The affidavit must be filed with the

petition and is therefore subject to the same ten-day filing deadline as the petition in the case of a pro se appeal.

These documents shall be submitted to the clerk of this court. The matter will be dismissed for failure to prosecute if the required documents are not submitted, are submitted in an improper form, or are untimely submitted. If the matter is not dismissed for failure to prosecute, the clerk shall forward the documents to the Chief Judge or the Chief Judge's designee for review to determine whether to permit Springer to file an original proceeding or to pursue an appeal. This review will take into account the preclusive effect of the Tax Court's determination in *Springer v. Comm'r*, No. 26045-96 (T.C. Feb. 10, 1997) (unpublished), as to the fact of Springer's liability for federal income taxes, penalties, and interest for 1990-1995 and the government's right to collect that liability, matters that are not subject to further litigation. Without the approval of the Chief Judge or the Chief Judge's designee, the matter will be dismissed. If the Chief Judge or the Chief Judge's designee approves the petition, an order shall be

entered indicating that the matter shall proceed in accordance with the Federal Rules of Appellate Procedure and the Tenth Circuit Rules.

Springer shall have ten days from the date of this order and judgment to file written objections to these proposed filing restrictions. *See Winslow*, 17 F.3d at 316. [PAGE 21 ENDS] The response shall be limited to fifteen pages. *See id.* If Springer does not timely file objections, the filing restrictions shall take effect twenty days from the date of this order and judgment, and the filing restrictions shall apply to any matter filed after that time, except for further filings in these combined appeals. *Id.* at 316-17. If Springer does file timely objections, the filing restrictions shall not take effect until after this court has ruled on those objections.

IV. Conclusion

The judgments of the district courts are AFFIRMED. Appellees' motion for sanctions in appeal No. 05-6387 is GRANTED IN PART in the amount of $4,000. Appellee's motion for sanctions in appeal No. 06-5123 is GRANTED IN PART in the amount of $4,000. It is ORDERED that, within thirty days of the date this order

and judgment is filed, Sprnger shall make arrangements with appellees' counsel for payment of the sanctions. It is FURTHER ORDERED that Springer shall pay the sanctions in accordance with those arrangements. Springer's motion to file a thirty-two page reply brief in appeal No. 05-6387 is GRANTED. Springer's other pending motions are DENIED.

Entered for the Court

Stephen H. Anderson
Circuit Judge
[PAGE 22 ENDS]

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

LINDSEY K. SPRINGER,

Plaintiff-Appellant,

v.

INTERNAL REVENUE SERVICE, ex rel. United States of America, by and through its Officers , and employeesFRED RICE; SCOTT PENNEY; LELAND BOWEN,

Defendants-Appellees.

No. 05-6387
(D.C. No. CIV-05-466-F)
(W.D. Okla.)

LINDSEY K. SPRINGER,

Plaintiff-Appellant,

v.

IRS, ex rel. United States of America, by and through its Officers and Employees,

Defendant-Appellee.

No. 06-5123
(D.C. No. 06-CV-110-CVE-PJC)
(N.D. Okla.)

LINDSEY K. SPRINGER,

Plaintiff-Appellant,

v.

IRS byand through the United States of America; FRED RICE; SCOTT PENNEY; LELAND NEUBAUER,

No. 06-6268
(D.C. No. CIV-05-1075-F)
(W.D. Okla.)

Defendants-Appellees

ORDER

Filed May 23, 2007

Before HENRY, ANDERSON and McCONNELL, Circuit Judges.

In an Order and Judgment filed in these combined appeals on May 1, 2007, we proposed imposing appellate filing restrictions on plaintiff-appellant Lindsey Springer and permitted Springer to file objections to them, which he has done in a timely manner. We have reviewed those objections and conclude that Springer has failed to demonstrate good cause why the proposed filing restrictions should not be imposed. It is therefore ORDERED that the filing restrictions contained in this Court's Order

and Judgment of May 1, 2007, shall take effect as of the date of the entry of this order.

Also, before the Court is Springer's Motion to Stay Mandate of Order Dated May 1, 2007, or its equivalent," filed May 18, 2007. The Motion is denied as unnecessary. If Springer timely files a petition for rehearing or rehearing en banc, the mandate automatically will be stayed unless the court orders otherwise. See Fed.R.App. 41(d)(1).

Entered for the Court.
Elisabeth A. Shumaker, Clerk

UNITED STATES COURT OF APPEALS
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v.

IRS, ex rel. United States of America, by and through its Officers and Employees,

Defendant-Appellee.

No. 06-5123
(D.C. No. 06-CV-110-CVE-PJC)
(N.D. Okla.)

LINDSEY K. SPRINGER,

Plaintiff-Appellant,

v.

IRS byand through the United States of America; FRED RICE; SCOTT PENNEY; LELAND NEUBAUER,

No. 06-6268
(D.C. No. CIV-05-1075-F)
(W.D. Okla.)

Defendants-Appellees

ORDER

Filed July 3, 2007

Before HENRY, ANDERSON and McCONNELL, Circuit Judges.

Appellant's petition for rehearing is denied

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court.

Elisabeth A. Shumaker, Clerk

Table of Contents

Frivolous tax returns; reliance on Paperwork Reduction Act. This ruling emphasizes to taxpayers, promoters, and return preparers that taxpayers are required to file a federal income tax return under section 6012 of the Code, and the regulations thereunder, and that the Paperwork Reduction Act of 1980 (PRA) does not relieve taxpayers of the duty to file. Any argument that the PRA relieves the taxpayer of the duty to file an income tax return has no merit and is frivolous.

PURPOSE

The Service is aware that some taxpayers are attempting to reduce their federal income tax liability by contending that they are not required to file an income tax return because of the Paperwork Reduction Act of 1980, Pub. L. No. 96-511, 94 Stat. 2812 (codified at 44 U.S.C. Â§ 3501, *et seq.*) (â€œPRAâ€). The PRA was enacted, among other reasons, to limit federal agenciesâ€™ information requests in order to minimize the paperwork burden for the public. The â€œpublic protectionâ€

provision of the PRA provides that no person shall be subject to any penalty for failing to maintain or provide information to any agency if the information collection request involved does not display a current control number assigned by the Office of Management and Budget (â€œOMBâ€). 44 U.S.C. Â§ 3512. Taxpayers who attempt to rely on the PRA contend that they are not required to file a Form 1040, *U.S. Individual Income Tax Return*, because the instructions and regulations associated with the Form 1040 do not display an OMB control number. The Service is also aware that some promoters, including return preparers, market a package, kit or other materials, advising or recommending that taxpayers take this frivolous position.

This revenue ruling emphasizes to taxpayers, promoters and return preparers that taxpayers are required to file a federal income tax return under section 6012 of the Internal Revenue Code, and the regulations thereunder, and that the PRA does not relieve taxpayers of the duty to file. Any argument that the PRA relieves the taxpayer of the duty to file an income tax return has no merit and is frivolous.

The Service is committed to identifying taxpayers who attempt to avoid their federal tax obligations by taking frivolous positions. The Service will take vigorous enforcement action against these taxpayers and against promoters and return preparers who assist taxpayers in taking these frivolous positions. Frivolous returns and other similar documents submitted to the Service are processed through the Service's Frivolous Return Program. As part of this program, the Service confirms whether taxpayers who take frivolous positions have filed all of their required tax returns, computes the correct amount of tax and interest due, and determines whether civil or criminal penalties should apply. The Service also determines whether civil or criminal penalties should apply to return preparers, promoters, and others who assist taxpayers in taking frivolous positions, and recommends whether an injunction should be sought to halt these activities. Other information about frivolous tax positions is available on the Service website at *www.irs.gov*.

ISSUE

Whether taxpayers may avoid their obligation to file federal income tax returns based on the PRA.

FACTS

Taxpayer A fails to file a federal income tax return, contending that it is not possible to comply with the filing requirement of Internal Revenue Code section 6012, because the Commissioner has not supplied an information collection request form that complies with the PRA.

LAW AND ANALYSIS

No law allows taxpayers to avoid their obligation under the Internal Revenue Code to file a federal tax return through reliance on the PRA. Courts repeatedly have rejected PRA-based arguments on a number of alternative grounds. Some courts have simply noted that the PRA applies to forms themselves, not to the instructions, and, because the Form 1040 does have a control number, there is no PRA violation. Other courts have held that Congress created the duty to file federal income tax returns in section 6012(a) and â€œCongress did not enact the PRAâ€™s public protection provision to allow OMB to abrogate any duty imposed by Congress.â€ *United States v. Neff*, 954 F.2d 698, 699 (11th Cir. 1992); *see also Salberg v. United States*, 969 F.2d 379, 383 (7th Cir. 1992)

(affirming conviction for tax evasion and failing to file a return, rejecting claims under the PRA); *United States v. Holden*, 963 F.2d 1114, 1116 (8th Cir. 1992) (affirming conviction for failing to file a return and rejecting argument in favor of acquittal premised on the fact that tax instruction booklets fail to comply with the PRA); *United States v. Hicks*, 947 F.2d 1356, 1359 (9th Cir. 1991) (affirming conviction for failing to file a return, finding requirement to provide information is required by statute, not by the Service); *Lonsdale v. United States*, 919 F.2d 1440, 1445 (10th Cir. 1990) (finding the PRA inapplicable to â€œinformation collection requestâ€ forms issued during an investigation of an individual to determine tax liability); *United States v. Wunder*, 919 F.2d 34, 37 (6th Cir. 1990) (rejecting claim of a PRA violation and affirming conviction for failing to file a return).

HOLDING

Taxpayers are required to file a federal income tax return under section 6012 of the Internal Revenue Code. The PRA does not relieve taxpayers of the duty to file, and any argument to the contrary has no merit and is frivolous.

CIVIL AND CRIMINAL PENALTIES

The Service will challenge the claims of individuals who attempt to avoid or evade their federal tax liabilities. In addition to liability for the tax due plus statutory interest, taxpayers who fail to file valid returns or pay tax based on frivolous PRA-based arguments face substantial civil and criminal penalties. Potentially applicable civil penalties include: (1) the section 6662 accuracy-related penalties, which are generally equal to 20 percent of the amount of tax the taxpayer should have paid; (2) the section 6663 penalty for civil fraud, which is equal to 75 percent of the amount of taxes the taxpayer should have paid; (3) a $500 penalty imposed under section 6702 when the taxpayer files a document that purports to be a return but that contains a frivolous position or suggests a desire by the taxpayer to delay or impede the administration of Federal income tax laws; (4) the section 6651 additions to tax for failure to file a return, failure to pay the tax owed, and fraudulent failure to file a return; and (5) a penalty of up to $25,000 under section 6673 if the taxpayer makes frivolous arguments in the United States Tax Court.

Taxpayers relying on frivolous positions involving the PRA also may face criminal prosecution under: (1) section 7201 for attempting to evade or defeat tax, the penalty for which is a significant fine and imprisonment for up to 5 years; (2) section 7203 for willful failure to file a return, the penalty for which is a significant fine and imprisonment for up to a year; and (3) section 7206 for making false statements on a return, statement, or other document, the penalty for which is a significant fine and imprisonment for up to 3 years.

Persons, including return preparers, who promote these frivolous positions and those who assist taxpayers in claiming tax benefits based on frivolous positions.may face civil and criminal penalties and also may be enjoined by a court pursuant to sections 7407 and 7408. Potential penalties include: (1) a $250 penalty under section 6694 for each return or claim for refund prepared by an income tax return preparer who knew or should have known that the taxpayerâ€™s position was frivolous (or $1,000 for each return or claim for refund if the return preparerâ€™s actions were willful, intentional or

reckless); (2) a penalty of up to $1,000 under section 6700 for promoting abusive tax shelters; (3) a $1,000 penalty under section 6701 for aiding and abetting the understatement of tax; and (4) criminal prosecution under section 7206, for which the penalty is a significant fine and imprisonment for up to 3 years, for assisting or advising about the preparation of a false return, statement or other document under the internal revenue laws.

DRAFTING INFORMATION

This revenue ruling was authored by the Office of the Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. For further information regarding this revenue ruling, contact that office at (202) 622-7950 (not a toll-free call).